

Message Text

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ACTION L-02

INFO OCT-01 EA-06 ISO-00 JUSE-00 SCA-01 PM-03 SS-15 SP-02

CIAE-00 INR-07 NSAE-00 PRS-01 /038 W

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P R 111139Z FEB 75

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC PRIORITY 693

INFO CSAF WASHDC/JACI

CINCPACAF/JA HICKAM AFB HI

13AF CLARK AB PI/JA

13AF ADVON/CC

388 CMBT SPT GP/JA KORAT RTAFB

LIMITED OFFICIAL USE SECTION 1 OF 2 BANGKOK 2435

STATE PLEASE PASS JUSTICE, ATTENTION: CIVIL DIVISION

STATE FOR OFFICE OF LEGAL ADVISER

E.O. 11652: N/A

TAGS: MILI, TH

SUBJECT: CIVIL LITIGATION: S. LENG VS KORAT A.B. NCO OPEN MESS,
ET AL.

1. THE RTG MINISTRY OF FOREIGN AFFAIRS (MFA) FORWARDED
THE SUMMONS, COMPLAINT, REQUEST FOR WRIT OF ATTACHMNT
AND ALLIED SUPPORTING PAPERS IN THE SUBJECT LITIGATION
BY NOTE DATED 30 DECEMBER 1974 AND REQUESTED THAT THE
NAMED DEFENDANTS BE ASKED TO RECEIPT FOR THE SAME AND
THAT THE EXECUTED RECEIPTS BE RETURNED.COPIES OF THE
PAPERS IN THE SUIT HAVE ALREADY BEEN FURNISHED TO CSAF/JACI,
AND THEREFORE ADDITIONAL COPIES WILL NOT BE FORWARDED
UNLESS SPECIFICALLY REQUESTED.

2. BY AN ADDITIONAL NOTE DATED 29 JANUARY 1975, MFA
FORWARDED SUMMONS FROM THE COURT FOR THE PRESENCE
OF THE DEFENDANTS ON 14 FEBRUARY 1975 FOR A HEARING ON
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THE PLAINTIFF'S PETITION TO PROCEED IN FORMA PAUPERIS.

COPIES OF THESE DOCUMENTS WILL BE POUCHED.

3. A COMPLETE REPORT ON THE BASIC LITIGATION HAS BEEN MADE TO CSAF/JACI AND, IN TURN, TO THE DEPARTMENT OF JUSTICE. RECOMMEND THAT COPIES THEREOF BE OBTAINED.

4. S. LENG, DOING BUSINESS AS WATANA SILP UBOL, ENTERED INTO A REQUIREMENTS CONTRACT WITH THE KORAT NCO OPEN MESS, HEREINAFTER REFERRED TO AS CLUB, ON 1 MAY 1974 FOR A TERM OF ONE YEAR TO PROVIDE THE CLUB WITH THE FRESH PRODUCE THAT IT NEEDED. THE CONTRACT WOULD BE RENEWED FOR TWO ADDITIONAL ONE YEAR TERMS BY THE CLUB IF IT DID NOT NOTIFY LENG IN WRITING THIRTY DAYS PRIOR TO THE EXPIRATION OF A TERM THAT IT DID NOT INTEND TO EXERCISE ITS OPTION. THE CONTRACT FURTHER PROVIDED THAT IT WOULD TERMINATE AUTOMATICALLY UPON THE DISSOLUTION OF THE CLUB AND THAT IT COULD BE QUOTE DECLARED VOID END QUOTE BY THE CLUB IF QUOTE IT HAS BEEN ESTABLISHED TO THE SATISFACTION OF THE COMMANDER, 388TH COMBAT SUPPORT GROUP, THAT THE VENDOR AND ONE OR MORE AGENTS OF THE NCO OPEN MESS HAVE ENGAGED IN THE GIVING AND RECEIVING OF ANY KICKBACK OR OTHER UN-AUTHORIZED EXCHANGE OF FAVORS END QUOTE. THE CONTRACT DID NOT SPECIFY WHAT LAW WOULD BE CONTROLLING IN THE INTERPRETATION OF ITS TERMS.

5. DURING THE AFOSI INVESTIGATION OF OPEN MESS IRREGULARITIES IN THAILAND, S. LENG WAS IMPLICATED AS HAVING PROVIDED GIFTS TO OPEN MESS PERSONNEL AT INSTALLATIONS OTHER THAN KORAT. ADDITIONALLY, HE EXPRESSLY ADMITTED HAVING MADE A PERSONAL LOAN TO THE THAI MANAGER OF THE KORAT CLUB. BASED UPON THIS, THE CLUB DECIDED WITH THE CONCURRENCE OF THE 388TH COMBAT SUPPORT GROUP COMMANDER TO TERMINATE THE CONTRACT. AN UNDATED LETTER OF TERMINATION SIGNED BY SSGT. TOMMY E. WILLIAMSON THE, CLUB CUSTODIAN, WAS FORWARDED TO LENG. HE ADMITTED RECEIVING IT ON 20 SEPT 1974. THE LETTER INDICATED THAT THE CONTRACT WAS BEING TERMINATED "AS BEING IN THE BEST INTERESTS OF THE KORAT NCO OPEN MESS." THE LETTER FURTHER ADVISED LENG THAT IF HE HAD ANY SUBCONTRACTS THEY WERE HIS RESPONSIBILITY AND THAT ANY QUESTIONS REGARDING THE TERMINATION SHOULD BE LIMITED OFFICIAL USE

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BROUGHT TO THE ATTENTION OF THE KORAT RTAFB CHIEF OF PROCUREMENT. THE CLUB, NEVERTHELESS, CONTINUED TO ORDER UNDER THE CONTRACT UNTIL 1 OCTOBER 1974 WHEN DELIVERY OF AN ORDER WAS REFUSED.

6. S. LENG FILED HIS SUIT IN THE NAKORN RATCHASIMA COURT (KORAT PROVINCIAL COURT), PENDING CASE NO. 652/2517, IN THE BEGINNING OF NOVEMBER 1974. IN IT HE IS SUING

COL. KENNETH H. GALLAGHER (FORMER COMMANDER, 388TH COMBAT SPT GROUP), SSGT. TOMMY E. WILLIAMSON (THE CLUB CUSTODIAN), THE KORAT NCO OPEN MESS, AND CMSGT. DONALD G. GOW (THE FORMER CLUB CUSTODIAN). SERVICE WAS ATTEMPTED ON THE NAMED DEFENDANTS ON 8 NOV 1974, BUT WAS ACCEPTED BY THE 388TH CBT SPT GP SJA EXCEPT FOR CMSGT. GOW WHO HAD ALREADY BEEN REASSIGNED FROM KORAT. ON 14 NOVEMBER THE SJA, UNDER DAF INSTRUCTIONS, RETURNED THE PROCESS TO THE COURT BY LETTER. IN THE LETTER IT WAS ALLEGED THAT THE US WAS THE PROPER PARTY IN INTEREST AND THAT APPROPRIATE SERVICE SHOULD BE MADE THROUGH MFA ON THE US EMBASSY. THE COURT WAS FURTHER ADVISED THAT THE CLUB WAS WILLING TO ATTEMPT SETTLING THE MATTER WITH MR. LENG. THE COURT ACCEPTED THE PLEADINGS AND HELD ALL PROCEEDINGS IN ABEYANCE TO ALLOW THE PARTIES TO WORK OUT THE DISPUTE.

7. MR. LENG REQUESTED DAMAGES IN THE AMOUNT OF 1,878,750 BAHT (APPROXIMATELY \$93,937.50). THIS CONSISTS OF 1,055,000 BAHT IN LIQUIDATED DAMAGES (5,000 BAHT PER DAY XR 211 DAYS) ON A SUBCONTRACT HE HAD TO TERMINATE; 280,000 BAHT FOR LOSS OF PROFITS (40,000 BAHT PER MONTH FOR SEVEN MONTHS); 500,000 BAHT FOR LOSS OF GOODWILL AND REPUTATION; AND 43,750 BAHT FOR SALARIES DUE SOME SEVEN EMPLOYEES FOR REMAINDER OF THE CONTRACT. DURING SETTLEMENT NEGOTIATIONS, LENG REDUCED HIS DEMAND TO 4/7 OF THE TOTAL (APPROXIMATELY 1,033,464 BAHT) BUT REFUSED TO SUBSTANTIATE ANY OF THE ITEMS EXCEPT TO PRODUCE A COPY OF HIS SUBCONTRACT. THE CLUB OFFERED 100,000 BAHT (ABOUT \$5,000). LENG WAS REQUESTED TO MAKE A FURTHER COUNTER OFFER BUT HE REFUSED. THE COURT WAS ADVISED OF THIS IMPASSE AROUND 13 DECEMBER AT WHICH TIME AN ORDER WAS ENTERED DIRECTING PROPER SERVICE UPON THE EMBASSY.

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P R 111139Z FEB 75

FM AMEMBASSY BANGKOK

TO SECSTATE WASHDC PRIORITY 694

INFO CSAF WASHDC/JACI
CINCPACAF/JA HICKAM AFB HI
13AF CLARK AB PI/JA
13AF ADVON/CC
388 CMBT SPT GP/JA KORAT RTAFB

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8. SINCE SERVICE HAS YET TO HAVE BEEN EFFECTED UPON THE NAMED DEFENDANTS A DEFAULT WOULD PROBABLY NOT BE ENTERED BECAUSE OF NON-APPEARANCE AT THE 14 FEB 1975 HEARING. NEVERTHELESS IT WOULD BE PRUDENT TO HAVE A REPRESENTATIVE PRESENT AT THE COURT NDBGYAKDQ
FGYPHZWPARTTKFIBZGLISLHN
THAT RESPECT, THE DEPARTMENT OF JUSTICE HAS ALREADY AUTHORIZED THE AIR FORCE TO RETAIN A LOCAL KORAT ATTORNEY, MR. CHUMLONG RATTANAKANOKE, TO REPRESENT ITS INTERESTS IN THE PRIOR PROCEEDINGS. IN VIEW OF HIS FAMILIARITY WITH THE CASE AS WELL AS HIS ABILITY, RECOMMEND THAT HIS RETENTION BE CONTINUED AT THE SAME RATE OF COMPENSATION AS BEFORE. ADDITIONALLY, RECOMMEND THAT HE BE DIRECTED TO BE PRESENT IN COURT ON FEBRUARY 14TH AS A REPRESENTATIVE OF THE UNITED STATES, SPECIFICALLY NOT THE NAMED DEFENDANTS, ADVISE THE COURT OF HIS POSITION AND REQUEST A DELAY IN THE HEARING SO THAT HE CAN OBTAIN REQUESTED INSTRUCTIONS FROM WASHINGTON. AT THE SAME TIME WE
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PROPOSE TO FORMALLY ADVISE MFA OF OUR RECEIPT OF THEIR NOTES, THE FACT THAT WE HAVE QUERIED WASHINGTON FOR INSTRUCTIONS, AND REQUEST THEIR INTERCESSION WITH THE COULXKNGUKGCHFWH

RFB.

RAWDTEXHB W

VGOSE INSTRUCTIONS.

MFA WILL BE FURTHER ADVISED THAT TWO OF THE NAMED DEFENDANTS ARE NO LONGER IN COUNTRY BUT THAT SHOULD NOT AFFECT THE SUIT SINCE THE INDIVIDUALS WERE AT ALL TIMES ACTING OFFICIALLY AND THAT THE CAUSE OF ACTION, IF ANY, LIES AGAINST THE KORAT CLUB, AN INSTRUMENTALITY OF THE UNITED STATES.

9. TWO PRIOR CASES IN THAILAND HAVE SOME BEARING ON THE CURRENT CASE: MISS SAFIPAN PREEYAWONG VS. LT. COL. HAROLD L. COOP IN HIS OWN NAME AND IN THE NAME OF THE

CHIEF OF THE JOINT LIAISON OFFICE ETC. (CASE NUMBERS
BLACK 257/2516, RED 187/2517, CHON BURI PROVINCIAL COURT)
AND WE FIXIT COMPANION ENTERPRISE CO. LTD. VS. MR. JOHN C.
THOMPSON AND THE US ARMY PROCUREMENT OFFICE BY MR. JOHN C
THOMPASON (CASE NUMBER 6274/1970, BANGKOK CIVIL COURT.)
IN THE LATTER CASE FOR BREACH OF CONTRACT THE US
ARGUED THAT THE SUIT WAS IN EFFECT AGAINST THE US SINCE
THOMPSON HAD AT ALL TIMES BEEN IN THE PERFORMANCE OF
OFFICIAL DUTY AND THAT SINCE THE US AS A SOVEREIGN WAS
IMMUNE FROM SUIT, THE CASE SHOULD BE DISMISSED. THE
COURT AVOIDED THE QUESTION OF SOVEREIGN IMMUNITY BY
DECIDING THAT THE PROCUREMENT OFFICE WAS NOT A JURISTIC
PERSON SUBJECT TO THAI JURISDICTION. IT DID, HOWEVER,
HOLD THAT THOMPSON WAS AN AGENT FOR A FOREIGN PRINCIPAL
AND WAS SUBJECT TO JURISDICTION AND PERSONAL LIABILITY.
THE SUIT WAS EVENTUALLY DISMISSED ON OTHER GROUNDS.
IN THE COOP CASE, AN ACTION FOR DAMAGE BY A MOTEL OWNER
FOR THE CANCELLATION OF A LEASE OF THE MOTEL BY THE
JOINT LIAISON OFFICE OF THE LOGISTICS AND TRAINING
COMMAND TO HOUSE KHMER STUDENTS IN THAILAND, THE
PLAINTIFF SOUGHT TO PROCEED IN FORMA PAUPERIS. THE
US ARGUED AGAINST THAT ACTION, AND THE SUIT, WHEN THE
PLAINTIFF REPEATEDLY FAILED TO APPEAR TO SUBSTANTIATE
HER RIGHT TO PROCEED IN FORMA PAUPERIS, WAS DISMISSED.
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FULL REPORTS ON BOTH CASES SHOULD BE IN THE POSSESSION
OF THE INTERNATIONAL LAW DIVISION, OFFICE OF THE JUDGE
ADVOCATE GENERAL, DEPARTMENT OF THE ARMY.

10. THE SUBJECT LITIGATION, UNFORTUNATELY, CANNOT
BE CONSIDERED IN ISOLATION. SUITS HAVE BEEN INITIATED
AGAINST OFFICER OPEN MESS OFFICIALS IN BANGKOK FOR THEIR
ALLEGED UNAUTHORIZED TERMINATION OF TWO ENTERTAINMENT
CONTRACTS. ADDITIONALLY THERE HAS BEEN AN INDICATION
THAT OTHER US MILITARY PERSONNEL MAY BE PERSONALLY SUED IN
THE VERY NEAR FUTURE FOR ACTIONS DONE IN THE PERFORMANCE
OF OFFICIAL DUTY. CONSEQUENTLY, THE ACTION TAKEN IN THE
LENG CASE HAS THE POTENTIAL FOR QUICK RAMIFICATIONS. UN-
FORTUNATELY, ON THE MERITS THE US POSITION IS NOT STRONG.
THE REPORTED INCIDENTS UPON WHICH THE TERMINATION WAS
PREMISED MAY NOT UNDER THAI LAW CONSTITUTE ADEQUATE
GROUNDS. THE US POSITION
HAS BEEN WEAKENED BY THE FACT
THAT A SIMILAR CONTRACT HELD BY THE PLAINTIFF AT UDORN
RTAFB WAS NOT ONLY NOT TERMINATED BUT WAS IN FACT EXTENDED.
CONSEQUENTLY IT WOULD SEEM TO BE IN THE BEST INTEREST OF
THE US TO SETTLE THIS DISPUTE. THE SO FAR INTRANSIGENT
ATTITUDE OF THE PLAINTIFF, HOWEVER, HAS COMPLICATED AND
FRUSTRATED EVERY SINCERE SETTLEMENT EFFORT. IN THIS

RESPECT THE PLAINTIFF HAS WRITTEN TO THE PRESIDENT, THE
AMBASSADOR, COMUSMACTHAI, AND SUPREME COMMAND HEADQUARTERS
IN AN ATTEMPT TO OBTAIN A SETTLEMENT UPON HIS TERMS. IT
WOULD THEREFORE APPEAR APPROPRIATE TO DELAY AND DRAG OUT THE
LITIGATION AS LONG AS POSSIBLE TO OVERCOME THIS INTRANSIGENCE
AND CONVINCE THE PLAINTIFF THAT HIS BEST RE COURSE IS TO
SIT DOWN AND HONESTLY NEGOTIATE A SETTLEMENT. THIS COULD
RESULT FROM HIS SEEING THAT HIS ATTEMPTS AT EXERTING
POLITICAL PRESSURE FAIL AND THAT HIS RESORT TO THE COURTS
WILL NOT OBTAIN SPEEDY RELIEF. AS TO THE LATTER IT IS
RECOMMENDED THAT EACH STEP IN THE LITIGATION BE CONTESTED.
IN THE PRESENT PROCEEDINGS, A LISTING OF LENG'S OTHER CURRENT
AND RECENT PAST CONTRACTS WITH US MILITARY ESTABLISHE MENTS
WOULD MAKE HIS TASK DIFFICULT. IF HE FAILS IN HIS ATTEMPT
TO PROCEED IN FORMA PAUPERIS, HE WILL BE REQUIRED TO
POST A BOND EQUAL TO 2 1/2 PERCENT OF THE AMOUNT BEING SUED LTPYHUEM
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QC
FLBJD MRPZNH394FEITURE IN THE EVENT
THE PLAINTIFF IS UNSUCCESSFUL IN THE SUIT WHICH EVENTUALLY
LED TO THE DISMISSAL OF THE COOP SUIT. AT THE SAME TIME
THE MERITS ARE CONTESTED, THE ARGUMENT SHOULD ALSO BE
MADE THAT THE SUIT IS IN EFFECT AGAINST AN INSTRUMENTALITY
OF THE US GOVERNMENT WHICH IS NOT RECOGNIZED AS A JURISTIC
PERSON IN THAILAND. IT SHOULD IN EFFECT BE MADE CLEAR TO
LENG THAT LITIGATION IS NOT A GUARANTEED SOLUTION. WHILE
THIS IS GOING ON, SETTLEMENT NEGOTIATIONS SHOULD BE
REINITIATED WITH THE HOPE OF REACHING A REASONABLE
MUTUALLY SATISFACTORY SOLUTION.

11. ACTION REQUESTED: AUTHORIZATION TO CONTINUE EMPLOYMENT
OF MR. CHUMLONG RATTANAKANOKE, PERMISSION TO HAVE CHUMLONG
APPEAR AT KORAT PROVINCIAL COURT ON 14 FEGTSXLXAPRUEC KCSTWVRJKDMYE

EXH

VTYB

SGY PENDING RECEIPT OF INSTRUCTIONS
FROM WASHINGTON; AND PERMISSION TO PROCEED ALONG LINES
SET FORTH IN PARAGRAPH 10 ABOVE.

KINTNER

NOTE BY OC/T: BANGKOK 2435 SEC 2/2 GARBLED TEXT PARAS 8, 9 & 10

AS RECEIVED, CORRECTION TO FOLLOW

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